

portability under that section."⁶⁶ Thus, it is clear from the statutory language that CMRS providers are not subject to number portability requirements, and the Commission in the *First Report and Order* even acknowledges this point.⁶⁷

Second, because CMRS number portability is not directed by the 1996 Act, there must be a basis in the record for imposing this additional obligation.⁶⁸ However, as shown by BANM, the record is insufficient to support the promulgation of rules governing wireless number portability.⁶⁹ "The Commission [] cites no facts to support the conclusion that lack of number portability hinders the entrance of new CMRS service providers."⁷⁰ In fact, quite the opposite is true. There is tremendous competition in the wireless industry. Because wireless subscribers do not, in most cases, advertise or publish their phone numbers, the lack of number portability does not impose any significant costs on subscribers that elect to switch wireless providers. This conclusion is supported by the fact that the rate of turnover on accounts is nearly 30

⁶⁶ *Id.*

⁶⁷ *First Report and Order* at 8431.

⁶⁸ *Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers*, 10 FCC Rcd 7025, 7031 (1995) (to regulate CMRS, the Commission and states must demonstrate a "clear cut need").

⁶⁹ BANM at 5.

⁷⁰ *Id.* (emphasis omitted). On the other hand, the request by Nextel that some SMR carriers which are operating as CMRS be exempted from the rules that apply to other CMRS should also be rejected. See *Petition of Nextel Communications, Inc.*, at 5-8 ("Nextel"). While GTE agrees that the record does not support extension of number portability requirements to CMRS, the record also does not support any distinctions among CMRS providers.

percent annually. Thus, any assertion that the inability to port numbers in the wireless context stifles competition is inconsistent with the realities of the marketplace.

Moreover, the Commission has failed to establish that the lack of number portability impairs competition between wireless and wireline local exchange service providers. As mentioned above, Congress has already determined that CMRS providers and local exchange service providers are different creatures by expressly excluding CMRS from the definition of a local exchange carrier. Whatever may be the future of competition between wireline and wireless technology for local exchange service, at the present time, CMRS providers are not offering competitive local loop service. Thus, there is currently little, if any, direct substitutability between wireless and wireline local exchange service. If in the future, wireless local exchange service becomes a competitive alternative to wireline local exchange service, the Commission should revisit the issue and treat it appropriately at that time. For the time being, there is no basis in the record of this proceeding for imposing number portability obligations on CMRS providers.

V. NEITHER THE 1996 ACT NOR THE RECORD SUPPORTS IMPLEMENTING RULES REGARDING NUMBER PORTABILITY FOR 500 AND 900 NUMBERS

A number of parties commented on number portability in the context of 500 and 900 numbers.⁷¹ GTE concurs with SBC that the Commission should reconsider whether to address the issues related to 500/900 number portability at this time.⁷² Even

⁷¹ See, e.g., BellSouth at 24-25; SBC at 6-10; USTA at 11-13.

⁷² See SBC at 6.

the Commission acknowledges that there is insufficient evidence in the record to determine whether portability for 500 and 900 numbers is even technically possible.⁷³ Consequently, it is premature to require portability for these non-geographic numbers until the record is further developed.

GTE also supports the argument of both SBC and USTA that the 1996 Act does not require LECs to offer portability of 500 and 900 numbers.⁷⁴ As the two parties point out, the 1996 Act defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers . . . when switching from one telecommunications carrier to another."⁷⁵ As SBC explains, 500 and 900 numbers "transcend specific geographic boundaries," such that "the services associated with them can accommodate such dynamic features as time-of-day and day-of-week routing to various locations."⁷⁶ Thus, "[b]ecause non-geographic numbers are, by definition, not associated with the 'same location,' they are not subject to the legislative portability requirement."⁷⁷

However, if the Commission determines that portability of 500 and 900 numbers is required, it should require all carriers to comply, not just the LECs. The Commission itself acknowledges that although "both LECs and interexchange carriers are able to

⁷³ *First Report and Order* at 8454.

⁷⁴ SBC at 6-7; USTA at 11-12.

⁷⁵ 47 U.S.C. § 153(30) (emphasis added).

⁷⁶ SBC at 7.

⁷⁷ *Id.* at 7; *see also* USTA at 11.

provide 500 and 900 services, such services are more frequently provided by IXC's."⁷⁸ Further, "most users of 500 and 900 services obtain their numbers from IXC's, and not from LEC's."⁷⁹ Requiring portability only for LEC-assigned 500 and 900 numbers would place LEC's at a competitive disadvantage -- a result that is wholly inconsistent with the 1996 Act's pro-competitive goal. Such an arrangement would create a system whereby numbers would flow in one direction only -- away from the LEC. Customers with 500 and 900 numbers assigned by IXC's would be deterred from switching carriers, because they would not be able to retain their numbers. To avoid adversely affecting competition, if the Commission requires portability of 500 and 900 numbers, it should apply this obligation even-handedly to all providers of such numbers, including the IXC's.

CONCLUSION

For the foregoing reasons, GTE urges the Commission to deny certain reconsideration requests in this proceeding. Specifically, the Commission should: (1) clarify its rules that QOR is an acceptable method of providing long-term number portability; (2) reject requests to accelerate the already aggressive deployment schedule for implementing long-term number portability, adopting instead a policy that reasonable requests for waiver of the schedule will be granted; (3) leave interim cost recovery methods to the states and private negotiations; (4) find that the record does

⁷⁸ *First Report and Order* at 8453.

⁷⁹ *Id.*


not support the extension of number portability to CMRS; and (5) conclude that neither the 1996 Act nor the record supports extending number portability to 500 and 900 numbers.

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September 27, 1996

APPENDIX

Recommended Amendments to the Rules Adopted in the First Report and Order

1. Amend § 52.3(a)(4):

(4) does not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point unless both telecommunications carriers agree;

2. Amended §52.3(f):

(f) The Chief, Common Carrier Bureau, shall monitor the progress of local exchange carriers implementing number portability, and may direct such carriers to take any actions necessary to ensure compliance with the deployment schedule set forth in Appendix A to Part 52 of this chapter.. The Chief, Common Carrier Bureau, shall entertain and grant waivers of the deployment schedule whereof (1) small end offices are involved in the largest 100 MSAs but for which there is no proposed competitive local exchange service, 2) where the local exchange carrier has made good faith efforts to comply with the deployment schedule but compliance is not practicable, or (3) where the public interest would be served.

3. Delete § 52.9

4. Delete § 52.11

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 1996, I caused copies of the foregoing "Opposition to Petitions for Reconsideration and/or Clarification" to be mailed via first-class postage prepaid mail to the following:

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